

**Letter of Findings Number: 08-0096R  
Individual Income Tax  
For the Tax Years 2005 and 2006**

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**ISSUE**

**I. Income Tax: Residence/Domicile**

**Authority:** IC § 6-3-2-1(a); IC § 6-3-1-12; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988).

The taxpayer protests the proposed assessment of state income tax on earnings for 2005 and 2006.

**STATEMENT OF FACTS**

Taxpayer works in different areas of the country, with assignments ranging in duration from one to two weeks to twelve to eighteen months. She owns real estate in Indiana, but has also purchased a home in another state. In 2004, Taxpayer filed IT-40 as an Indiana resident. For the 2005 and 2006 tax years, Taxpayer filed Form IT-40 PNR (Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return), claiming small amounts of Indiana adjusted gross income. The Indiana Department of Revenue (Department) billed taxpayer for Indiana income tax based upon the balance of taxpayer's federal adjusted gross income. Taxpayer paid the additional Indiana liabilities, but filed claims for refund, asserting that she was a non-resident, living and working in locations other than Indiana for the tax years at issue. After the Department denied her refund claims, taxpayer filed a protest. The Department scheduled a hearing, but the taxpayer chose to forego attending or participating in the hearing. Taxpayer bases her protest on the documents and explanation already submitted.

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**DISCUSSION**

IC § 6-3-2-1(a) states the following:

Each taxable year, a tax at the rate of three and four-tenths percent (3.4 [percent]) of adjusted gross income is imposed upon the adjusted gross income of every **resident** person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person. (**Emphasis added.**)

The statutory definition of "Resident" can be found at IC § 6-3-1-12:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

The Indiana Administrative Code also provides guidance on residency and domicile requirements. [45 IAC 3.1-1-21](#) states in part that an Indiana resident is "[a]ny individual who was domiciled in Indiana during the taxable year" or "[a]ny individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state. . . ." [45 IAC 3.1-1-22](#) defines "domicile" and includes that "a person has only one domicile at a given time even though that person maintains more than one residence at that time." The cited regulation also notes:

Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case.

Finally, the Indiana Supreme Court weighed in on domicile in *State Election Board v. Bayh*, 521 N.E.2d 1313, 1318 (Ind. 1988), stating "[i]ntent and conduct must converge to establish a new domicile."

The taxpayer bases her protest on her purchase of a home in another state and her employment during the subject tax years. The taxpayer purchased a home in 2004 in another state "with the intent of relocating and establishing" residency in that state. Taxpayer adds that she filed the necessary income tax returns for that state for 2004-2006. Taxpayer provided documents with her protest regarding her presence in that state for a period during 2005 and 2006, including sample utility bills and bank account statements.

The Department based its assessment and subsequent denial of taxpayer's refund claims on evidence that the taxpayer never lost her Indiana domicile. Under IC § 6-3-1-12(a), the taxpayer remained an Indiana resident.

The taxpayer held an Indiana Drivers' License in 2004, and renewed that license in 2005. The taxpayer also took, and benefited from, the homestead exemption on her Indiana real property during the subject tax years.

Regarding the information taxpayer provided in her protest, the Department notes that the sample utility bills pertaining to taxpayer's out-of-state home contain billing addresses different from the address of that home. Taxpayer's bank account statements indicate movement between a number of different locations, suggesting anything other than an intent to establish a domicile in a location other than that already established and maintained in Indiana. In communications with taxpayer regarding her scheduled hearing, she instructed the Department to resend the Department's correspondence bearing her out-of-state address to that of her Indiana property.

The Department has also verified that taxpayer continues to hold a valid Indiana Drivers' License, and, to date, still owns two automobiles registered in Indiana.

As [45 IAC 3.1-1-22](#) states, in pertinent part, "if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established." Taxpayer's employment history and movement suggest that the taxpayer expected to "very probably" be assigned to yet another location in another part of the country, thus not establishing new domicile in a location other than in Indiana.

The facts, when viewed in their totality, show that the taxpayer did not lose her Indiana domicile: she had, and still possesses, an Indiana Drivers' license; she benefits from exemptions applicable to her Indiana real estate; she owns two vehicles registered in Indiana; she used, and still uses, an Indiana address for correspondence with the Department; and her employment and movement activity do not indicate the establishment of a domicile other than that already established in Indiana.

#### **FINDING**

The taxpayer's protest is respectfully denied.

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